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January 28, 1997

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Mr. William F. Caton
Acting Secretary
Federal Communication Commission
1919 M Street, NW-Room 222
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Ex Parte Presentation in CC Docket No. 97-1

Dear Mr. Caton:

On January 27, 1997, Gerry Salemm and I, of AT&T; along with Susan Jin Davis and Lisa Smith of MCI; Rick Whitt of WorldCom; Linda Oliver of Hogan and Hartson; Richard Metzger of ALTS; and Genny Morelli of CompTel met with Gina Keeney, Larry Atlas and Richard Metzger of the Common Carrier Bureau. Issues relating to Ameritech's compliance with the Section 271 checklist were discussed. At their request, a copy of AT&T's complaint against Ameritech Michigan, filed on January 24, 1997, in the U.S. District Court, Eastern District of Michigan, was provided by AT&T to the Commission staff present at the meeting. A copy of that document is attached.

Because the meeting was held late in the day, two copies of this letter and the attachments are being submitted to the Secretary of the Federal Communications Commission in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Sincerely,

Attachment

cc (without attachmen) to:

Regina Keeney
Larry Atlas
Richard Metzger

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JAN 23 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

United States District Court Eastern District of Michigan

Summons in a Civil Action and Return of Service Form

97-60018

Case Number and Judicial District (to be completed by the Court)

Plaintiff name(s):

AT&T Communications of Michigan, Inc.

Plaintiff's attorney, address and telephone:Arthur J. LeVasseur (P29394)
Fischer, Franklin & Ford
3500 Guardian Building
Detroit, Michigan 48226
(313) 962-5210**Defendant name(s):**Michigan Bell Telephone Company d/b/a
Ameritech Michigan, Inc. and The
Commissioners of the Michigan Public
Service Commission, in their Official
Capacity and not as individuals

vs.

Name and address of defendant being served:Michigan Bell Telephone Company d/b/a
Ameritech Michigan, Inc.
444 Michigan Avenue, Room 1750
Detroit, MI 48226**To the defendant:**

This summons is notification that YOU ARE BEING SUED by the above named plaintiff(s).

1. You are required to serve upon the plaintiff's attorney, name and address above, an answer to the complaint within 20 days after receiving this summons, or take other actions that are permitted by the Federal Rules of Civil Procedure.
2. You must file the original and one copy of your answer within the time limits specified above with the Clerk of Court.
3. Failure to answer or take other action permitted by the Federal Rules of Civil Procedure may result in the issuance of a judgment by default against you for the relief demanded in the complaint.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
Southern Division

AT&T COMMUNICATIONS OF MICHIGAN,
INC.

Plaintiff,

v.

MICHIGAN BELL TELEPHONE COMPANY
d/b/a AMERITECH MICHIGAN, INC. and
THE COMMISSIONERS OF THE MICHIGAN
PUBLIC SERVICE COMMISSION,
in their Official Capacity
and not as individuals,

Defendants.

Civil Action No.

**COMPLAINT FOR DECLARATORY AND OTHER RELIEF
UNDER THE TELECOMMUNICATIONS ACT OF 1996**

AT&T COMMUNICATIONS OF MICHIGAN, INC. ("AT&T"), by its attorneys,
for its complaint alleges:

INTRODUCTION

1. This action is commenced to secure full implementation of the congressionally mandated process for opening local telephone markets to competition. It arises out of efforts by AT&T to compete with Defendant Michigan Bell Telephone Company (d/b/a

Ameritech Michigan, Inc.) (hereinafter "Ameritech"), in providing local telephone services to Michigan consumers and to require Ameritech to fulfill its obligations in that regard under the Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 56 (1996) ("Act" or "1996 Act").

2. Ameritech is currently effectively the incumbent monopoly provider of both local exchange and exchange access telephone services in most of the State of Michigan. Local exchange service is the use of the local network to provide local telephone service to residential and business consumers. Exchange access service is the use of the same local network facilities by long distance carriers to originate and terminate long distance calls by their customers.

3. The 1996 Act was passed to end the prior regime in which incumbents monopolized these local facilities and services through which consumers place and receive all local and long-distance telephone calls. In its place, the Act mandates a new competitive regime and requires the removal of legal and economic impediments to local exchange and exchange access competition.

4. The 1996 Act expressly empowers the Federal Communications Commission ("FCC") to preempt state-imposed barriers to local service entry. But Congress recognized that to overcome incumbent monopolists' strong economic incentives to delay and impede competition, the 1996 Act had to do more than simply strip away legal barriers to competition. In order to shift monopoly local telephone markets to competition as quickly as possible, the Act requires Ameritech and other "incumbent local exchange carriers" ("incumbent LECs") to enter "interconnection" agreements that will allow AT&T and other "requesting

telecommunications carriers" to offer local exchange and exchange access services choices immediately.

5. These interconnection agreements set the terms and conditions upon which AT&T and other potential new entrants may use incumbents' services and facilities. Those terms and conditions in turn are defined by the specific duties the 1996 Act places on incumbents. Among other things, the Act requires incumbents (i) to permit new entrants to obtain individual "unbundled" elements (including any features, functions and capabilities of such elements) of the incumbent's network at nondiscriminatory cost-based rates and use them to provide competing local exchange and exchange access services and (ii) to provide "number portability" to the extent technically feasible so that consumers who switch from an incumbent LEC to a new entrant can keep their same telephone number.

6. The 1996 Act establishes an expedited procedure for new entrants to secure the agreements with incumbent local telephone companies necessary to create the new competitive regime. Congress directed incumbents to negotiate in good faith with potential competitors seeking interconnection agreements. It also provided for compulsory arbitration by state public utility commissions where interconnection agreements could not be reached through negotiation. To ensure that interconnection agreements resulting from the state-conducted arbitrations comply with the federal requirements in the Act and the FCC's implementing rules, Congress authorized federal court review (and precluded state court review) of completed interconnection agreements approved by state commissions.

7. In this action, AT&T seeks review of certain terms of an interconnection agreement between it and Ameritech ("Agreement") imposed by the Michigan Public Service Commission ("MPSC"). On December 26, 1996, Ameritech filed an interconnection agreement with the MPSC which it purported to be "a joint filing of the parties." On January 14, 1997, AT&T filed another version of the interconnection agreement with the MPSC. On January 16, 1997, Ameritech filed yet another agreement with the MPSC, which it acknowledged "supersedes" its December 26, 1996 filing. Although it is unclear which, if any, of these documents constitutes an "agreement" for purposes of the Act or this action, AT&T files this Complaint as a protective measure to preserve its right to seek review in this Court under the Act. In view of the foregoing, we are referring to the document filed with the Michigan Public Service Commission on January 14, 1997 as the "Agreement". However, irrespective of which, if any, document is deemed to be the agreement, the issues raised in this Complaint are applicable.

8. Through negotiations with Ameritech and arbitration of open issues, AT&T sought to enforce the duties the 1996 Act places on Ameritech. The majority of the provisions of the Agreement, are consistent with the Act. In at least two specific respects, however, the Agreement conflicts with the Act; and the MPSC's departures from the central requirements of the 1996 Act threaten to deny Michigan consumers the benefits of effective competition promised by the Act.

9. First, the Agreement conflicts with the requirements of the Act and the FCC's implementing regulations that incumbents provide new entrants with access to their network

elements (such as local switches) and to any features of such elements on an "unbundled" basis. Consistent with the Act and regulations, AT&T seeks to provide local exchange and exchange access service to its new customers by combining certain unbundled elements from Ameritech's existing network facilities with AT&T's own operator and directory assistance services. Even though the FCC has recognized that customized routing -- the feature of a local switch that would permit the routing of all "0" and operator assistance calls from AT&T's local customers to AT&T's operator services and directory assistance -- should be provided to new entrants when technically feasible, the Agreement impermissibly excuses Ameritech from its obligation to do so as a standard offering.

10. Second, the Agreement imposed by the MPSC unlawfully fails to require Ameritech to provide interim number portability ("INP") through the technically feasible method of "route indexing." Because of the significant inconvenience (and, for business consumers, cost) associated with changing telephone numbers, most customers will refuse to change carriers without the assurance that their numbers will remain the same. Route indexing is the best currently available interim number portability method to serve most larger business customers, a key segment of the local telephone service market. Because Ameritech failed to demonstrate that route indexing is not technically feasible and the MPSC made no such finding, this portion of the Agreement violates the Act and the FCC's regulations.

11. There are two additional issues included in the Agreement that, if interpreted in the manner advocated by Ameritech, also violate the Act. Under the Act and, as interpreted by AT&T, the Agreement, AT&T is entitled to (i) purchase "shared" (i.e., common)

transport as a means of interoffice transmission and (ii) to use the unbundled local switching element it purchases from Ameritech to provide terminating access for long distance calls. If, however, the Agreement is interpreted to deny AT&T either of these items as Ameritech claims, it violates the Act and the FCC's regulations.

12. With respect to common transport, Ameritech has unambiguously stated in the arbitration that it would provide AT&T common transport for interoffice transmission. Shared or common transport is the transmission of a carrier's traffic over facilities used in common with and shared by other carrier's traffic. Dedicated transport, by contrast, is the transmission of a carrier's traffic over facilities dedicated to that carrier's use. No dispute over this issue arose in the arbitration because Ameritech repeatedly represented to the MPSC that the Act and FCC Regulations required it to provide common transport. It was only later that Ameritech distorted "shared" transport to mean not common transport but dedicated transport. Ameritech's interpretation of "shared" transport is inconsistent with its own interpretation during the arbitration and violates its obligations under the Act and FCC regulations. AT&T is entitled to common transport under the Agreement and, if it is not, the Agreement is consistent with the Act.

13. With respect to terminating access, pursuant to Section 251(c)(3) and the FCC's rules, AT&T is entitled to use or obtain access to Ameritech's local switches and all of their features, functions and capabilities as unbundled network elements. As the FCC has concluded, carriers such as AT&T that use unbundled local switch elements have the exclusive right to use them to provide exchange access services (i.e., the service provided to long-distance

carriers in originating and terminating long distance calls). Under the Agreement, AT&T is entitled to provide such services and to collect revenues associated with the provision of such services. But in direct violation of the Act and the FCC regulations, Ameritech interprets the Agreement (i) to restrict the right of AT&T, as the purchaser of the unbundled local switching element, to offer call terminating access services, (ii) to restrict AT&T to originating services only, and (iii) to deny AT&T the ability to collect the terminating access charges.

14. These unlawful terms of the Agreement -- and Ameritech's improper construction of the Agreement to deny AT&T its rights under the Act -- cause AT&T serious and irreparable injury, and ultimately will deny Ameritech's currently captive Michigan consumers the full benefits of fair and open competition as envisioned and mandated by Congress. Accordingly, AT&T seeks appropriate declaratory and injunctive relief from this Court.

JURISDICTION AND VENUE

15. This is a civil action arising under the Telecommunications Act of 1996, a law of the United States. This Court has jurisdiction over this action pursuant to 47 U.S.C. § 252(e)(6) and 28 U.S.C. §§ 1331, 1337.

16. Venue in this District is proper under 28 U.S.C. § 1391(b). All individual defendants reside in Michigan, and Ameritech resides in and has its principal place of business in this District. This is an "appropriate Federal district court" within the meaning of 47 U.S.C. § 252(e)(6).

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PARTIES

17. Plaintiff AT&T Communications of Michigan, Inc. is a corporation organized under the laws of the State of Michigan with its principal place of business in Michigan. AT&T is a wholly-owned subsidiary of AT&T Corp., which through its operating subsidiaries currently provides long distance and other telephone services in the State of Michigan. AT&T does not currently provide local telephone service in Michigan. AT&T is a "telecommunications provider" and a "requesting telecommunications carrier" within the meaning of the Act.

18. Defendant Michigan Bell Telephone Company does business under the assumed name of Ameritech Michigan, Inc. Ameritech is a Michigan corporation with its principal place of business in Detroit. Ameritech provides local exchange, exchange access, and certain intrastate long-distance services within the State of Michigan. Ameritech is an "incumbent local exchange carrier" within the meaning of the Act.

19. The Michigan Public Service Commission is a "State commission" within the meaning of Sections 153(41), 251 and 252 of the Act.

20. Defendants Commissioners of the Michigan Public Service Commission are named as Defendants in their official capacities, and not as individuals.

BACKGROUND

Ameritech's Monopoly Control of the Michigan Local Telephone Market

21. Prior to the enactment of the 1996 Act, incumbent local exchange carriers such as Ameritech generally enjoyed a monopoly in providing local telephone services to business and residential consumers within their designated service areas.

22. Ameritech is the incumbent provider of local telephone service in areas that contain the vast majority of residential and business subscribers in the State of Michigan. Ameritech's local telephone network generally reaches all residences and businesses in its service area. There currently is no effective local telephone competition in those areas.

23. Although Michigan consumers have a number of choices regarding which telecommunications carrier they want to handle their long-distance calls, those long-distance calls must still originate or terminate on Ameritech's local network in its service area. It is impractical and uneconomical for any new entrant to duplicate Ameritech's network in the near term, and use of this network is therefore essential to placing both local and long distance telephone calls.

The Telecommunications Act of 1996

24. The 1996 Act adopts a comprehensive scheme rapidly to introduce competition into the historically monopolized local telephone markets. In § 253 of the Act, Congress expressly authorized the FCC to preempt any state laws that have the "effect" of

prohibiting any entity from offering any interstate or intrastate service. Congress also recognized the practical reality that competition would take years to develop (and in some areas might not develop at all) if local entry required each new entrant to replicate the local services infrastructure network. Accordingly, § 251 of the Act includes specific obligations for incumbents to allow competitors to interconnect with and use incumbents' existing networks and, in conjunction with § 252, sets federal standards for rates for such use.

25. Certain of those duties in Section 251 are directly relevant here. First, Section 251(b)(2) specifies that Ameritech and other local exchange carriers have a "duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by" the FCC.

26. Second, Section 251(c)(2) imposes on Ameritech and other incumbent local exchange carriers a duty to permit new entrants in the local market such as AT&T to interconnect with the local exchange carrier's network "at any technically feasible point" on "rates, terms and conditions that are just, reasonable and nondiscriminatory." Interconnection is essential so that the customers of the incumbent LEC and those of the new entrant can communicate with one another.

27. Third, Section 251(c)(3) of the Act imposes a duty on incumbents to permit new entrants to lease "unbundled elements" of the incumbents' network and facilities and requires incumbents to provide such unbundled network elements in a manner that allows entrants "to combine such elements" to offer "telecommunications service." Section 251 requires that rates for these network elements be just, reasonable and nondiscriminatory, and § 252(d)(1)

further mandates that those rates be based on the cost of providing the elements, without reference to the rate of return or other rate-based proceedings that prevailed in the monopoly era.

28. Because of Congress' express desire to open local markets to competition as quickly as possible and the need to establish national, pro-competitive regulations further defining incumbents' duties under the Act, Section 251(d)(1) required the FCC to adopt regulations to implement the local competition provisions of the Act within six-months of its date of enactment. The FCC did so on August 8, 1996, releasing its 700-page First Report and Order. On October 15, 1996 in Iowa Utilities Bd. v. FCC, Nos. 96-3321 et al., the United States Court of Appeals for the Eighth Circuit stayed certain of the FCC's pricing rules pending an expedited appeal — but left intact the remainder of those rules, including certain regulations that are directly relevant here.

29. In addition to imposing substantive duties on incumbent LECs to foster competition in the local exchange market, the Act establishes an expedited procedure pursuant to which new entrants can obtain the benefits promised by the Act to compete in the local exchange market. Pursuant to Section 252(a), any telecommunications carrier may request that the incumbent LEC negotiate an interconnection agreement providing for, inter alia, unbundled network elements. The Act requires both incumbents and potential new entrants to negotiate in good faith to reach such agreements.

30. Concerned about the willingness of incumbents voluntarily to reach such agreements with potential competitors, Congress in § 252(b) of the Act authorized either party, during a window between 135 days through 160 days from the incumbent's receipt of the request

to negotiate, to petition the state public utility commission to arbitrate any open issues. The arbitration must be completed no later than nine months after the date on which the incumbent LEC received the initial request for negotiations.

31. The 1996 Act establishes federal standards for these state commission arbitrations. Section 252(c) of the Act requires that any resolution of issues by a state commission through arbitration and any conditions imposed on the parties as a result of the arbitration must (i) ensure that the resolution and conditions meet the requirements of Section 251 and the FCC's implementing regulations; (ii) establish rates pursuant to Section 252(d); and (iii) provide a schedule for implementation of the terms and conditions by the parties.

32. After the state commission concludes the arbitration, the parties then submit an "agreement" embodying the agreed to and arbitrated provisions to the state commission pursuant to Section 252(e) for its approval or rejection.

33. The final step in this process is federal district court review of the agreement to ensure that it meets the standards of federal law. Section 252(e)(6) of the 1996 Act provides that any party aggrieved by a determination made by a state commission may bring an action in federal district court to determine whether the agreement meets the requirements of §§ 251 and 252. Here, as described below, the agreement between AT&T and Ameritech does not meet those standards in certain respects, and AT&T therefore is seeking review in this Court of certain determinations made by the MPSC.

**Negotiations Between AT&T and Ameritech and the
Arbitration Before the Michigan Public Service Commission**

34. Pursuant to Section 252(a), on February 27, 1996, AT&T formally requested the commencement of negotiations with Ameritech for an interconnection agreement. AT&T and Ameritech engaged in extensive negotiations in an unsuccessful attempt to reach a Michigan interconnection agreement.

35. On August 1, 1996, pursuant to § 252(b)(1) of the Act, AT&T filed a timely Petition for Arbitration with the MPSC seeking compulsory arbitration of a number of issues open between AT&T and Ameritech. On August 2, 1996, Ameritech filed its own petition raising certain issues, and the two petitions were consolidated into a single arbitration proceeding. The MPSC assigned an arbitration panel consisting of a MPSC Administrative Law Judge and two MPSC staff members to hear the evidence and to issue a decision.

36. On October 28, 1996, the arbitration panel issued its decision on the open issues that the parties had been unable to resolve through negotiation. Decision of Arbitration Panel, MPSC Case Nos. U-11151, U-11152 (Oct. 28, 1996) ("Arbitration Decision"). A copy of that Decision is attached hereto as Exhibit A.

37. One of the issues submitted for arbitration was whether Ameritech should be required to provide a standard offering to AT&T of an unbundled network element platform without Ameritech-provided operator services and directory assistance. AT&T intends to provide these services using its own operator services and directory assistance capability through customized routing to its own operators. This unbundled platform consists of a combination of

unbundled elements from Ameritech's local network — such as local loops (the wires and cables connecting homes and businesses to local switches) and local switches — which AT&T will then combine with its own operator services and directory assistance to offer local exchange and exchange access service. Operator and directory assistance calls can be directed from Ameritech's local switches to AT&T's operator services and directory assistance platform through the technically feasible process of customized routing. AT&T therefore both in negotiations and in the arbitration sought to obtain an unbundled element platform without operator services and directory assistance as a standard offering.

38. On this issue, the arbitration panel found that AT&T's proposed contract language requiring a standard offering of an "Unbundled Element Platform without Operator Services and Directory Assistance" should be included in the parties' interconnection agreement. In rejecting Ameritech's position, the panel stated:

The Panel fails to see the logic of Ameritech's willingness to offer Operator Services as an unbundled element while refusing to extract this unbundled element from a proposed combination of unbundled elements. The FCC required incumbent LECs to combine requested elements in any technically feasible manner (FCC Order, ¶¶ 293-95). Ameritech indicates that it is willing to offer this combination except that costs cannot be ascertained in advance. Ameritech has not demonstrated that this offering is technically infeasible. Ameritech's lack of knowledge of how to price this offering is no reason to deny this combination to AT&T.

39. AT&T also sought interim number portability through route indexing during its negotiations with Ameritech and through the arbitration. With respect to that issue, the arbitration panel held that Ameritech was not required to provide route indexing as an interim number portability option, characterizing route indexing as a "medium-term" number portability

solution and stating that Ameritech should not have to incur the costs of developing route indexing because of the scheduled implementation of permanent number portability. The panel adopted Agreement language proposed by Ameritech, which offered other interim number portability solutions. The arbitration panel made no findings that route indexing was technically infeasible.

40. With respect to common transport, in its response to the AT&T Petition for Arbitration, Ameritech stated unequivocally that it "agrees with AT&T that Ameritech Michigan must provide unbundled dedicated transport, common transport and tandem switching" to comply with FCC regulations and that "[i]t does not appear from AT&T's Petition that (with the exception of price) AT&T takes issue with Ameritech Michigan's offering of dedicated transport, common transport and tandem switching."

41. Ameritech's position throughout the arbitration remained consistent — Ameritech would offer common transport. Ameritech witness Gregory J. Dunny confirmed in his testimony that Ameritech was required by the FCC's rules to provide common transport and that its proposed agreement provided as much. He also stated "I am not aware of any disputes with AT&T regarding" common transport.

42. In the pricing schedule to Ameritech's proposed interconnection agreement filed with the MPSC on August 26, 1996, Ameritech listed "Unbundled Common Transport Termination" and Unbundled Common Transport Facility with a minute-of-use rate for both services.

43. With respect to terminating access, Ameritech did not attempt to restrict AT&T's use of the unbundled local switching element to provide terminating access services or its right to collect terminating access charges during the negotiation of the interconnection agreement or the subsequent arbitration proceedings before the MPSC.

44. On November 26, 1996, the Defendant Commissioners, acting in their official capacity and with one Commissioner dissenting, issued an Order Approving Agreement Adopted by Arbitration, MPSC Case Nos. U-11151, U-11152 (Nov. 28, 1996) ("MPSC Order"), ruling on certain objections of the parties to the Arbitration Decision. A copy of that Order is attached hereto as Exhibit B. In that order, the MPSC approved some and modified other aspects of the decision of the arbitration panel with respect to the interconnection agreement. The MPSC rejected the final offers of both AT&T and Ameritech on the issues of indemnification, limitation of liability, and standards of performance and ordered the parties to submit proposals on those issues within 30 days.

45. With respect to customized routing of operator services and directory assistance, the MPSC overruled the Arbitration Panel and rejected contract language requiring that Ameritech provide an "Unbundled Element Platform Without Operator Services and Directory Assistance" as a standard offering. The MPSC did not conclude that customized routing was not technically feasible or that it was not technically feasible to provide the combination of services requested by AT&T. The MPSC adopted Ameritech's position, permitting Ameritech to consider customized routing only through the Bona Fide Request

("BFR") process, which gives Ameritech the opportunity to delay competition and which is an obstacle to effective local exchange competition.

46. Over AT&T's objection, the MPSC adopted, without modification, the interim number portability contract language that Ameritech had proposed and the arbitration panel had earlier adopted. That language did not include route indexing as an option.

47. The Agreement requires Ameritech to provide "shared" transport. Because of the parties' mutual and unambiguous understanding that common transport was to be offered as part of unbundled transport and the clear record before the MPSC that Ameritech was obligated to provide common transport, AT&T accepted the use of the word "shared" in place of the word "common." At no time did Ameritech renounce its prior testimony before the MPSC, nor did it apprise AT&T prior to the close of the record in the arbitration that Ameritech would renounce the position taken by Ameritech and witnesses who testified on its behalf.

48. Ameritech now refuses to offer common transport to purchasers of the unbundled local switching element and the platform and instead offers only dedicated transport. Ameritech's alternative "shared" transport offering is not functionally different from dedicated transport. Specifically, Ameritech requires "shared" transport purchasers to purchase dedicated transmission facilities and then arrange to share these dedicated facilities with one or more other competing carriers if the purchaser so wishes. For purchasers of the unbundled switch or platform who have insufficient volumes to purchase dedicated or "shared" transport, Ameritech requires the purchaser to pay rates for such services that are higher than the cost-based rates to which carriers are entitled under the Act.

49. The effect of Ameritech's dedicated "shared" transport offering is to bar other carriers from purchasing usage of existing interoffice transmission facilities on a shared basis with Ameritech's own traffic. Ameritech purports to force new competitors either to duplicate Ameritech's transport network to transport calls or otherwise to pay higher than cost-based rates for Ameritech's alternative transport service, the result of which is a de facto bundling of local switching with other (retail) services.

50. Moreover, with respect to terminating access, Ameritech now for the first time claims that it is allowed to set conditions on AT&T's use of the unbundled local switching element. Specifically, Ameritech claims authority to deny AT&T's right to offer terminating access services and to receive the terminating access charges.

51. On December 26, 1996, Ameritech filed an agreement purporting (i) to reflect the parties' negotiations, the Arbitration Decision, and the MPSC Order and (ii) to resolve the issues left open by that Order. On January 14, 1996, AT&T submitted a separate agreement to the MPSC. On January 16, 1996, Ameritech submitted yet another version of the agreement to the MPSC which "supersedes" its December 26 version. The parties disagree about which version of the agreement governs their rights and obligations. Each of the agreements is several hundred pages long.

52. AT&T has been aggrieved by the MPSC's determinations, including the Order and the Arbitration Decision and brings this action to determine whether the Agreement meets the requirements of Sections 251 and 252 of the Act.

**The MPSC's Order and the Agreement Fail to Meet the
Requirements of Sections 251 and 252 and FCC Regulations**

A. Operator Services and Directory Assistance

53. The MPSC's Order and the Agreement denying AT&T the right to purchase an "Unbundled Element Platform Without Operator Services and Directory Assistance" as a standard offering violate both the Act and the FCC's implementing regulations in at least two respects. First, the Agreement fails to require Ameritech to combine the unbundled elements requested by AT&T. Section 251(c)(3) of the Act imposes a duty on Ameritech to provide to AT&T as a requesting telecommunications carrier "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point" and requires Ameritech to "provide such unbundled network elements in a manner that allows [AT&T] to combine such elements in order to provide such telecommunications service." The Act defines "network element" to mean a "facility or equipment used in the provision of a telecommunications service" and to include, *inter alia*, "features, functions, and capabilities that are provided by means of such facility or equipment."

54. The Agreement contravenes the binding (and unstayed) FCC regulation implementing the Act which provides that an incumbent LEC

shall perform the functions necessary to combine unbundled network elements in any manner . . . provided that such combination is:

(1) technically feasible; and

(2) would not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

Id. § 51.315(c). In promulgating this regulation, the FCC stated that the language of § 251(c)(3) "bars incumbent LECs from imposing limitations, restrictions, or requirements on requests for, or the sale or use of, unbundled elements that would impair the ability of requesting carriers to offer telecommunications services in the manner they intend" and "bars incumbent LECs from separating elements that are ordered in combination, unless a requesting carrier specifically asks that such elements be separated." First Report and Order ¶¶ 292, 293.

55. Access to unbundled network elements is technically feasible "absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier" 47 C.F.R. § 51.5. Ameritech had the burden to demonstrate technical infeasibility.

56. Ameritech did not meet its burden of demonstrating that the combination requested by AT&T is technically infeasible. The combination requested by AT&T is technically feasible.

57. Second, the Agreement violates the Act and the FCC's rules by failing to provide AT&T with customized routing — a feature of the local switch. The FCC's regulations make clear that Ameritech is required to provide to AT&T "nondiscriminatory access" to "local switching capability," which includes "any technically feasible customized routing functions provided by the switch." 47 C.F.R. § 51.319. In promulgating that regulation, the FCC stated that incumbent LECs are required "to the extent technically feasible, to provide customized

routing, which would include such routing to a competitor's operator services or directory assistance platform." First Report and Order ¶ 536. The customized routing, requested by AT&T, is technically feasible.

58. The failure of the Agreement and the MPSC to require Ameritech to provide such customized routing except through the BFR process violates § 251(c)(3)'s requirement that conditions be "just, reasonable, and nondiscriminatory."

59. The FCC likewise concluded that "customized routing, which permits requesting carriers to designate the particular outgoing trunks that will carry certain classes of traffic originating from the competing provider's customers, is technically feasible in many LEC switches."

60. The MPSC improperly based its decision in part on Ameritech's claimed inability to price a standard offering because costs would vary from switch to switch. The FCC regulations make clear that "A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns" 47 C.F.R. § 51.5.

B. Route Indexing

61. The MPSC Order and the Agreement are inconsistent with the Act and the FCC's binding regulations in a second significant respect by failing to require Ameritech to provide route indexing as an interim number portability option. The Act imposes upon local exchange carriers "[t]he duty to provide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the [FCC]." 47 U.S.C. § 251(b)(2). The

FCC has expressly required that, until a permanent number portability solution is fully deployed, an incumbent LEC like Ameritech must provide all technically feasible interim number portability methods sought by new entrants. In the Matter of Telephone Number Portability, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking ¶¶ 110, 111, 115 (July 2, 1996) ("Number Portability Order"); 47 C.F.R. § 52.27.

62. Route indexing is technically feasible. Ameritech failed to meet its burden of demonstrating that route indexing is not technically feasible, and the MPSC made no such finding.

C. Common Transport

63. Throughout the Arbitration, Ameritech unambiguously stated it would offer common transport. The Agreement, if now construed in the manner advocated by Ameritech so that "shared" transport does not include common transport, fails to permit AT&T to obtain common transport and therefore violates Section 251(c)(3) of the Act and the FCC's regulations.

64. The FCC's binding regulations define "interoffice transmission facilities" as "incumbent LEC transmission facilities dedicated to a particular customer or carrier, or shared by more than one customer or carrier, that provide telecommunications service between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers." 47 C.F.R. § 51.319(d). These regulations further provide that Ameritech, as an incumbent LEC, must "provide exclusive use of interoffice transmission facilities dedicated to a particular customer or carrier, or use of the features, functions and capabilities of interoffice transmission facilities

shared by more than one customer or carrier [and] provide all technically feasible transmission facilities features, functions and capabilities that the requesting telecommunications carrier could use to provide telecommunications services."

65. In adopting these regulations, the FCC specifically referred to "shared facilities such as common transport", First Report and Order ¶ 258, and has ordered that incumbent LECs provide interoffice transmission facilities on an unbundled basis to requesting carriers, id. ¶¶ 439-40. The FCC stated: "We conclude that incumbent LECs must provide interoffice transmission facilities on an unbundled basis to requesting carriers." Id. ¶ 439.

66. The FCC's rules also require incumbent LECs to "provide a requesting telecommunications carrier access to an unbundled network element along with all of the network element's features, functions, and capabilities, in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element." 47 C.F.R. § 51.307(c). Likewise, the regulations specify that an incumbent such as Ameritech "shall not impose limitations, restrictions, or requirements on request for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends." 47 C.F.R. § 51.309(a). The FCC's rules further provide that when purchasing access to a feature, function, or capability of an unbundled network element, AT&T is entitled to use that function for a period of time (id. § 51.309(c)) and that Ameritech must provide nondiscriminatory access so that the quality of the element and access to that element is at least equal in quality to that which Ameritech provides itself.